SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 458

MILTON COVERDALE, SHERIFF AND EX-OFFICIO TAX COLLECTOR, APPELLANT,

versus

ARKANSAS LOUISIANA PIPELINE COMPANY.

Appeal from the District Court of the United States for the Western District of Louisiana.

Brief On Behalf Of Arkansas Louisiana Pipeline Company, Appellee.

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Attorneys.

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STATUTE.

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OPINIONS OF THE COURT BELOW.

The opinions rendered in this cause in the United States District Court for the Western District of Louisiana upon the application of appellee for an interlocutory injunction are reported in:

Arkansas Louisiana Pipeline Company v. Coverdale, 17 F. S. 34 (R. 14 & 20).

The opinion rendered in that Court upon final hearing in the suit is reported in:

Arkansas Louisiana Pipeline Company v. Coverdale, 20 F. S. 676 (Advance opinions No. 7) (R. 124).

JURISDICTION.

This is a direct appeal from a final decree of a specially constituted United States District Court of three judges *(U. S. C. Title 28, § 380)* permanently enjoining the appellant, as Sheriff of the Parish of Ouachita, an officer of the State of Louisiana, from enforcing a statute of that State *(R. 132)*.

The statute involved, Act No. 6 of the Legislature of Louisiana of 1932 (see Appendix), purports under the provisions of Section 3 thereof to levy an "excise, license or privilege tax" as follows:

> "Section 3. In addition to all other taxes of every kind imposed by law, every person, firm, corporation or association of persons engaged in the State of Louisiana in any business or occupation, which person, firm, corporation or association of persons uses in the conduct of such business or occupation, at any time, electrical or mechanical power of more than ten horsepower and does not procure all the power required in the conduct of such business or occupation from a person, firm, corporation or association of persons subject to the tax imposed by Section 1 or Section 2 of this act, shall be subject to the payment of an excise, license or privilege tax of One Dollar ($1.00) per annum for each horsepower of capacity of the machinery or apparatus, known as the 'prime mover' or 'prime movers', operated by such person, firm, corporation

or association of persons, for the purpose of producing power for use in the conduct of such business or occupation; * * *"

This statute has been held invalid under the Commerce Clause of the Federal Constitution upon the ground that the tax imposed in its application to engines employed and used by appellee in the conduct of its interstate gas pipe line business constitutes an unlawful burden upon that commerce.

The appeal from the decree may be directly from the District Court to the Supreme Court:

U. S. C. Title 28, §380.

The decree of the District Court was rendered May 22nd, 1937 *(R. 132)* and the petition for appeal filed July 30th, 1937 *(R. 134)*.

STATEMENT OF CASE.

The Arkansas Louisiana Pipeline Company, a Delaware corporation, engaged in the States of Louisiana, Arkansas and Texas during the period involved in the business of producing, buying, transporting and selling natural gas, and in the course of that business owning and operating a twenty inch pipe line extending from Sterlington, in the Parish of Ouachita, Louisiana, northwesterly into the States of Texas and Arkansas, through which natural gas was transported, and ninety-six per cent. (96%) thereof sold and marketed in said States, by the use of pumps or compressors propelled by ten (10) one thousand horsepower gas engines, brought this action to

enjoin the Sheriff of the Parish of Ouachita from proceeding to sell all the property of the corporation situated in that Parish to enforce the payment of an excise or license tax assessed by the Supervisor of Public Accounts of the State of Louisiana *(R. 57)*, under the provisions of Act No. 6 of 1932 *(supra)* for the period August 1st, 1932 to July 31st, 1933, of One Dollar ($1.00) per annum for each horsepower of capacity of the engines employed as stated above.

The ground upon which the injunction was sought and granted in the District Court upon final hearing is that the tax levied by the statute is in its application to the interstate business conducted by the corporation repugnant to the Commerce Clause of the Federal Constitution:

> "(a) That the statute contravenes Article 1, Sections 8 and 10 of the Constitution of the United States, reserving to the Congress of the United - the sole power to regulate commerce between the several states in that the tax so demanded is a license or privilege tax upon the use of an instrumentality employed by petitioner in interstate commerce without the operation of which it could not so engage in the interstate business described and is a direct burden upon such interstate commerce."
>
> *(Petition §16 (a).)*
> *(R. 5.)*

Although other grounds of invalidity of the statute were asserted in the original petition, they were formally abandoned *(R. 123)* after the decision of the State Supreme Court construing the statute (*State ex rel. Porterie v. H. L. Hunt, Inc., 182 La. 1073)*, with the result that the

sole question presented upon final hearing in the lower court and upon this appeal is the question of invalidity of the statute under the Commerce Clause.

Omitting evidential matters set forth in the assignment of errors *(R. 135)* which has been adopted as the statement of points to be relied upon *(R. 147)*, the contentions of appellant as disclosed by the assignment are as follows:

(a) That the engines employed by appellee in connection with the operation of its pipe line are not instrumentalities of interstate commerce, even though the power produced by them is actually consumed in that commerce.

"The Court erred in not holding that the prime movers in the case at bar are engaged in an intrastate function, viz., that of producing, generating or manufacturing mechanical power or energy, and that complainant is engaged in the intrastate business in Louisiana of producing, generating or manufacturing mechanical power or energy and is subject to the tax levied by Section 3 of Act 6 of 1932, which levies an excise, license or privilege tax on the business of producing and generating mechanical energy or power, measured by the horse power capacity of the prime movers used to produce, manufacture or generate such power or energy.

"* * * the Court further erred in not holding that when complainant produces, manufactures and generates mechanical power or energy in Louisiana by the use of prime movers, that such operation or business in Louisiana is intrastate in character, and is subject to the tax levied by Section 3 of Act 6 of 1932, even though such energy or power may ultimately be trans-

mitted and used in both intrastate and interstate operations, or even if it should ultimately be used exclusively to operate an instrumentality of interstate commerce; * * *"

(Nos. 5 & 6.)
(R. 137.)

(b) That the tax levied by the statute in question is an excise or license tax upon the privilege of producing or manufacturing mechanical power, an intrastate operation, regardless of the use of such power in interstate commerce.

"The Court erred in failing to hold that the tax levied by Section 3 of Act 6 of 1932 is an excise, license or privilege (fol. 179) tax levied on the privilege of producing, generating or manufacturing mechanical power or energy in Louisiana as a distinct act of producing, and without regard to its subsequent use."

(No. 8.)
(R. 138.)

(c) That the natural gas transported by appellee does not enter interstate commerce until after the engines employed have performed their function of pumping the gas into the twenty inch interstate main.

"The Court erred in failing to hold that the natural gas enters interstate commerce only after its actual physical delivery into the twenty-inch interstate main at complainant's Munce Station; the Court further erred in failing to hold that the gathering of the gas in the field-gathering (fol. 180) systems by both complainant, and persons from whom complainant purchases gas, is intrastate commerce; the Court

further erred in not holding that the conversion of natural gas from an unmerchantable product to a merchantable product at the Munce Station constitutes a manufacturing process and an interruption in the transportation of the natural gas, and is further reason the gas is not in interstate commerce until it is actually physically within the twenty-inch interstate main at complainant's Munce Station."

(No. 11.)
(R. 138 & 139.)

(d) That the tax imposed does not operate as a direct burden upon interstate commerce.

"In the alternative, and in the alternative only, should the tax levied by Section 3 of Act 6 of 1932 be held to be on interstate commerce, which is denied by respondent, then, and in that event only, respondent assigns as error the failure of the Court to find that the tax involved falls not directly on interstate commerce, but indirectly, and not violative of the commerce clause of the Constitution of the United States; the Court further erred in failing to hold that when a tax is, as here, levied on all similarly situated, and in terms is not upon the business done, so that it appears on the face of the statute that 'it is clear that it is not imposed with the covert purpose or with the effect of defeating federal constitutional rights,' it is not a prohibited burden on interstate commerce, but is a valid exercise of the power of the State to tax."

(No. 13.)
(R. 139 & 140.)

It is apparent from the statement of the several contentions set forth that the single theory advanced by

appellant is that even though mechanical power is used or consumed as the means by which interstate transportation is accomplished, there is, nevertheless, a point at which the power is produced and prior to its use which can be termed "manufacture" and as a local privilege separated from the interstate nature of the business conducted and subjected to state taxation.

Under appellee's view of the case the question actually presented is whether or not engines which produce power consumed as the means by which interstate transportation is accomplished are to be considered as instrumentalities of that commerce; and under the appellant's theory the question is whether or not the production of power consumed as the means by which interstate transportation is accomplished is to be considered as an instrumentality of interstate commerce.

ARGUMENT

SUMMARY.

A. The natural gas produced and purchased by appellee in Louisiana was, so far as it became part of a stream of gas flowing through the company's pipe line to the State line and beyond, moving in interstate commerce from the time it left the wells.

B. The engines and compressors operated by the company at the origin of its interstate line in the Parish of Ouachita, Louisiana, are essential instrumentalities and the principal means through which the interstate transportation of natural gas is accomplished.

C. The statute involved, as construed by the Supreme Court of Louisiana, imposes an occupation tax with respect to both interstate and intrastate business through an indiscriminate application to instrumentalities common to both sorts of commerce and is, consequently, invalid.

D. The tax imposed by the statute is a direct burden on the interstate business conducted by appellee.

A.

There is actually no dispute concerning any ultimate fact involved in this case and in referring to the facts of the case we shall state only those which are uncontroverted in any manner.

The twenty inch pipe line of the Arkansas Louisiana Pipeline Company, extending from Sterlington, in the Parish of Ouachita, Louisiana, into the States of Arkansas and Texas, is connected at the point of origin with field gathering lines extending into the Parishes of Ouachita and Richland (See plat *R. 76*). Gas flows through the gathering lines from the wells under the respective well pressures, the average of which is from ninety (90) to two hundred twenty (220) pounds per square inch *(R. 69)* to a central point at the origin of the twenty inch main, called the Munce Compressor Station, where it is pumped or compressed into the main by the engines and compressors involved in this controversy.

In order to have sufficient gas available to make deliveries at distant points to meet business requirements, the pressure by volume of gas in the twenty inch main line is maintained at from two hundred seventy-five (275) to

four hundred fifty (450) pounds per square inch *(R. 73)*. Because of the difference of pressures, gas from the field lines cannot be delivered directly into the twenty inch main without compression; and although the capacity of the producing wells is in no manner affected by the action of the compressors, a pressure differential is created which permits a flow of gas through the field lines to the inlets of the compressor cylinders, the function of the compressors with regard to the field lines being merely to remove gas at the location of the compressors and by such removal permit the flow of additional gas into such lines from the well pressures *(R. 45)*.

As the gas approaches the location of the compressors through the field lines, it passes through separators in which the water and gasoline content are removed; and although the rate of flow is diminished at the point of the separators to permit their function, the flow from the wells through the field lines to the compressors and into the main line is not interrupted *(R. 87 & 92)*.

It consequently appears that the flow of gas is continuous from the wells as pumped or compressed into the main line in quantities or volume determined by the daily withdrawals to meet business requirements.

During the period for which the tax in controversy was assessed (August 1st, 1932 to July 31st, 1933), 18,365,659 m.c.f of gas was transported through the twenty inch pipe line from Sterlington, westward *(R. 65)*, of which amount ninety-six per cent. (96%) was transported

out of the State of Louisiana and sold in the States of Texas and Arkansas *(R. 64)*, the daily deliveries dependent on seasonal and other requirements ranging from forty-five million to eighty-five million cubic feet *(R. 68)*. Of the total amount of gas so transported, 2,012,397 m.c.f. was produced from wells owned by the pipe line company and 16,080,181 m.c.f. purchased.

It will undoubtedly be conceded that natural gas is a lawful article of commerce and its transmission from one state to another for sale and consummation in the latter is interstate commerce and that a state law, whether of the state where the gas is produced or that where it is to be sold which by its necessary operation prohibits, obstructs or burdens such transmission, is a regulation of interstate commerce and a prohibited interference.

Pennsylvania v. W. Virginia, 262 U. S. 553; 67 L. Ed. 1117;
West v. Kansas Natural Gas Co., 221 U. S. 229; 55 L. Ed. 716;
Pennsylvania Gas Co. v. Public Service Commission, 252 U. S. 23; 64 L. Ed. 434.

In considering whether or not any transaction or operation is a part of commerce between the states, the course of business as established by the interested parties or the intention as carried out determines as a matter of law the essential nature of the movement. When a product is intended for interstate commerce and handled in accordance with that intention to be ultimately distributed in interstate commerce and the course of business pursued establishes a practice indicating a continuous movement,

then the product is involved in commerce between the states when first handled in the intended interstate movement.

See:

Lemke v. Farmers' Grain Company, 258 U. S. 50; 66 L. Ed. 458;

B. O. & S. W. RR. Co. v. Settle, 260 U. S. 166; 67 L. Ed. 189;

Stafford v. Wallace, 258 U. S. 495; 66 L. Ed. 735;

Flanagan v. Federal Coal Co., 267 U. S. 222; 69 L. Ed. 583.

The principles announced in these cases have been applied directly to the transportation of oil and gas by pipe line.

In *Eureka Pipe Line Company v. Hallanan, 257 U. S. 265; 66 L. Ed. 227,* the state of West Virginia sought to impose against the pipe line company a tax of two cents per barrel upon oil transported through its pipe lines. The substantial facts and conclusion reached in the decision are stated in the syllabus as follows:

> "State produced oil, gathered by a pipe line company and transported by it under a local tariff covering intrastate transportation and storage, was, so far as it became part of a stream of oil that was flowing through the company's pipes to the state line and beyond, moving in interstate commerce from the time it left the wells, so as to prevent the state from subjecting the company to a license or occupation tax measured by the volume of such traffic, and none the less so because, if different orders from the producers had been received by the pipe line company, it would have changed the destination toward which the oil was started and at which it in fact arrived, the pipe line company, not the pro-

ducer, being the master of the destination of any specific oil."

(Syl. §2.)

In the course of the opinion, the Court said:

"As has been repeated many times, interstate commerce is a practical conception, and, as remarked by the court of first instance, a tax, to be valid, 'must not, in its practical effect and operation, burden interstate commerce.' It appears to us as a practical matter that the transmission of this stream of oil was interstate commerce from the beginning of the flow, and that it was none the less so that if different orders had been received by the pipe line it would have changed the destination upon which the oil was started and at which it in fact arrived. We repeat that the pipe line company, not the producer, was the master of the destination of any specific oil. Therefore its intent and action determined the character of the movement from its beginning, and neither the intent nor the direction of the movement changed."

(P. 272.)

The same conclusion was reached as to a gas pipe line in the connected case of *United Fuel Gas Company v. Hallanan, 257 U. S. 277; 66 L. Ed. 234*, where the following statement appears in the syllabus:

"A corporation engaged in gathering and purchasing natural gas, which it distributes through its pipes, may not be subjected to a state license or occupation tax measured by the volume of the traffic, where the great body of the gas starts for points outside the state, and goes to them either in the company's own pipes or those of connecting companies, to whom it sells, although the necessities of business require a much smaller amount of gas, destined to points inside the state, to be carried undistin-

guished in the same pipes, and although, as to the gas sold to the connecting companies, the seller and purchasers may change their minds before the gas leaves the state, and the precise proportions between local and outside deliveries may not have been fixed."

(Syl. §2.)

The same rule was again announced in *Peoples Natural Gas Company v. Public Service Commission, 270 U. S. 550; 70 L. Ed. 726,* from which we quote the following statement of the syllabus:

"The transportation of natural gas in pipe lines from producing wells in one state to consumers in another is interstate commerce although it is purchased from the producer at the state line by a distributor through the agency of a meter there installed, where the transportation is continuous from the place of production to that of consumption, with prompt delivery to purchasers at destination."

(Syl. §1.)

See also:

State Tax Commission v. Interstate Natural Gas Company, 284 U. S. 41; 76 L. Ed. 156;

West Virginia Pipe Line Company v. State, 120 S. E. 759.

The facts of this case disclose a continuous flow of gas from the wells situated in the State of Louisiana to the final destination in the States of Arkansas and Texas according to a practice definitely established and fixed by the nature and location of the pipe lines, with daily and constant withdrawals at the points of destination. The gas transported, consequently, was moving in interstate commerce from the time it left the wells.

B.

The nature of the design and assembly of the machines employed by the pipe line company in the compression of gas at the point of origin of its interstate line is shown by the plat of similar apparatus appearing in the record *(R. 90)*.

The function of these machines is concisely stated in the affidavit of H. T. Goss as follows:

> "Compressor units installed in the Munce Compressor Station of the Arkansas Louisiana Pipeline Company are known as 1000 HP Cooper, twin tandem, double acting, gas engine compressor units. Mechanically speaking, each is (fol. 59) an integral unit due to the physical design and assembly and as such could be used for no purpose other than that originally intended, namely, to assist in the movement of natural gas through pipe lines.
>
> "Briefly described, the energy created by the explosion of a mixture of natural gas and air under proper conditions in the engine cylinder is imparted directly by means of the piston rod to the compressor cylinder in which the natural gas is compressed. The energy so created has no commercial value in the sense that electricity has a commercial value. The energy created due to the physical design, assembly and type of equipment is not susceptible to transmission over considerable distances and can be used only for the purpose originally intended, namely, to assist in the movement of natural gas through the transmission lines, connected to the compressor cylinder.
>
> "In the process of compression, the chemical properties of the natural gas itself remain unchanged.

"The flow of natural gas through a pipe line is a function involving various factors, the most important of which are:

(1) The inlet pressure.
(2) The outlet pressure.
(3) The length of the line.
(4) The size (diameter) of the pipe.
(5) The quantity of gas to be transported.

"From the above it is apparent that for any given condition as to length and size of line, the flow of a given quantity of gas through a pipe line depends on the difference in pressure of the gas between the inlet and outlet points. In other words, difference in pressure between any two points along a pipe line causes a flow of gas between the two points and through the pipe line.

"It is also apparent from the above, that theoretically, a line could be constructed for the transportation of gas without the means of artifically boosting the pressures, (fol. 60) so long as any pressure exists at the inlet. However, in some cases, practical and economic limits preclude such enormous sizes of pipe lines that in practical design and construction, smaller size lines are selected and compressor stations are installed to increase the pressure of the gas to such an extent as to cause the flow of the required amount of gas through the pipe size selected. In other words, the installation and operation of a compressor station, such as that referred to as the Munce Compressor Station, is for the sole purpose of affording means of transporting required volumes of gas through the pipe lines and without such equipment, such transportation would be impossible.

"The power required for such compression can be determined by generally accepted formulae. Under the theory involved in such determination it is apparent that no power is generated in the compressor unit except that required to overcome fric-

> tional resistance in the compressor unit itself, until or unless gas is admitted to the compressor cylinder and compressed. Therefore, the power is consumed in the actual movement of the gas in the compressor cylinder, causing a corresponding movement in the pipe line, with the result that the power is generated and used solely in accomplishing the movement of gas in the pipe line, which movement to the required degree would be impossible without such power."
>
> *(R. 44 & 45.)*

The above statement with regard to the function of the engines employed relates to facts of which this Court could take cognizance without proof, and the nature of the function of the engines is such that it cannot be seriously contended that they are not the principal means through which the interstate transportation of natural gas is accomplished. The facts with regard to the function of these engines as instrumentalities of interstate commerce cannot be distinguished from the facts of other cases decided by this Court, in which the means by which interstate commerce was accomplished has been held to be a necessary instrumentality of that commerce.

The general rule with regard to the limitation of the right of a state to impose taxes, the effect of which is to burden interstate commerce in its application to instrumentalities of that commerce, is clearly stated in *Helson v. Kentucky, 279 U. S. 245, 73 L. Ed. 683*, as follows:

> "The statute here assailed clearly comes within the principle of these and numerous other decisions of like character which might be added. The tax is exacted as the price of the privilege of using an instrumentality of interstate commerce.

It reasonably cannot be distinguished from a tax for using a locomotive or a car employed in such commerce. A tax laid upon the use of the ferryboat would present an exact parallel. And is not the fuel consumed in propelling the boat an instrumentality of commerce no less that the boat itself? A tax which falls directly upon the use of one of the means by which commerce is carried on directly burdens that commerce. If a tax cannot be laid by a state upon the interstate transportation of the subjects of commerce, as this court definitely has held, it is little more than repetition to say that such a tax cannot be laid upon the use of a medium by which such transportation is effected. 'All restraints by exactions in the form of taxes upon such transportation, or upon acts necessary to its completion, are so many invasions of the exclusive power of Congress to regulate that portion of commerce between the states.' Gloucester Ferry Co. v. Pennsylviana, 114 U. S. 214, 29 L. ed. 165, 1 Inters. Com. Rep. 382, 5 Sup. Ct. Rep. 826."

(P. 252.)

See also:

Cooney v. Mountain States T. & T. Company, 294 U. S. 384; 79 L. Ed. 934;

State Tax Commission of Mississippi v. Interstate Natural Gas Company, 284 U. S. 41; 76 L. Ed. 156;

Bingaman v. Golden Eagle Western Lines, 297 U. S. 626; 80 L. Ed. 928;

Pickard v. Pullman Southern Car Co., 117 U. S. 34; 29 L. Ed. 785;

Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196; 29 L. Ed. 158;

Sprout v. South Bend, 277 U. S. 163; 72 L. Ed. 833;

Minot v. Philadelphia W. & B. Ry. Co., 2 Abb. (U. S.) 323, 343; Federal Case No. 9645.

From the points presented in appellant's assignment of errors it appears that it is contended the interstate transportation of gas did not commence until the gas transported was physically delivered within the twenty inch main line. Such a contention assumes that the function of the engines and compressors situated at the origin of the interstate main was merely to load gas into the line rather than to bring about the transportation through the force of the additional pressures created at the point of origin. If the view suggested were to be accepted and the transportation of gas through the field lines considered as entirely independent of the transportation through the main or interstate line and the function of the engines and compressors considered to be performed entirely in the loading of gas from the field lines into the interstate main, this function would, nevertheless, constitute an indispensable part of the interstate transportation, since the transportation would be futile unless the gas transported was placed or forced into the line.

The business of loading and unloading is interstate or foreign commerce:

Puget Sound Stevedoring Co. v. Tax Commission, Case No. 68, October Term, 1937; L. Ed. Advance Opinions, Vol. 82, #3, page 64;

Philadelphia & S. Mail S. S. Co. v. Pennsylvania, 122 U. S. 326, 341, 342; 30 L. Ed. 1200, 1203, 1204, 7 S. Ct. 1118, 1 Inters. Com. Rep. 308;

Leloup v. Port of Mobile, 127 U. S. 640, 32 L. Ed. 311, 8 S. Ct. 1380, 2 Inters. Com. Rep. 134;

Galveston H. & S. A. R. Co. v. Texas, 210 U. S. 217, 52 L. Ed. 1031, 28 S. Ct. 638.

The contention of the appellant is that the functions of the engines employed in the business of the appellee in producing or generating power can be separated from the consumption or use of that power in interstate commerce and, as so separated, considered as a local privilege and not as an instrumentality of the interstate commerce in which it is consumed. It is urged that this view is supported by the decision in *Utah Power & Light Company v. Pfost, 286 U. S. 165, 76 L. Ed. 1038.*

The facts of that case are that the Utah Power & Light Company, a public utility, was engaged in doing business in the States of Idaho, Utah and Wyoming, generating, transmitting and distributing electrical power and energy for sale to consumers in each of the states mentioned and in interstate commerce among them. The suit was brought to enjoin the enforcement of an act of the Idaho Legislature levying a license tax on the manufacture, generation and production within the state for sale of electricity and electrical energy. The Utah Power & Light Company contended that the tax was not one upon manufacture or production but on the transfer or transmission of energy from its source to its place of use, and that the generator through which the energy of water power was converted into electrical energy was an instrumentality of interstate commerce; the opposite contention being that the generation of electrical energy was a distinct act of production and without regard to its subsequent transmission.

In the course of the opinion, the Court said:

"Appellant here, by means of what are called generators, converts the mechanical energy of fall-

ing water into electrical energy. Thus, by the application of human skill, a distinct product is brought into being and transmitted to the places of use. The result is not merely transmission; nor is it transmission of the mechanical energy of falling water to the places of consumption; but it is, first, conversion of that form of energy into something else, and, second, the transmission of that something else to the consumers.

"While conversion and transmission are substantially instantaneous, they are, we are convinced, essentially separable and distinct operations. The fact that to ordinary observation there is no appreciable lapse of time between the generation of the product and its transmission does not forbid the conclusion that they are, nevertheless, successive and not simultaneous acts.

"We think, therefore, it is wholly inaccurate to say that appellant's entire system is purely a transferring device. *On the contrary, the generator and the transmission lines perform different functions, with a result comparable, so far as the question here under consideration is concerned, to the manufacture of physical articles of trade and their subsequent shipment and transportation in commerce.*" (Italics ours).

(P. 179.)

The obvious distinction and difference between the facts of the *Pfost* case and the case presented here is that electrical energy, because of the peculiar nature of that substance, was transmitted over the lines of the producing company by its own force; whereas, natural gas produced by the plaintiff in this case is not and cannot be transmitted efficiently in the interstate business conducted, except through the application of additional force in the form of the machinery employed at the compressor station in

the Parish of Ouachita and the use there of the engines by the capacity of which the tax imposed is measured.

The distinction is emphasized by the fact that in the State of Louisiana the producer of natural gas pays what is termed a severance tax upon the right to produce that product; and the taxes complained of here are imposed in addition to the severance tax which is levied upon production. The taxes are distinct and affect entirely different operations.

As pointed out in the *Pfost* case, *supra*, taxation is a practical matter, and what constitutes commerce, manufacture or production is to be determined upon practical considerations.

> "We must not lose sight of the fact that taxation is a practical matter and that what constitutes commerce, manufacture or production is to be determined upon practical considerations."
>
> *(P. 179.)*

In the present case power or mechanical energy is produced only as and to the extent it is used or consumed in accomplishing the interstate transportation of natural gas. The suggestion that this production of power merely as it is consumed can be termed "manufacture" independently of the purpose accomplished in its use is at least novel and plainly opposed to the view accepted in the case of *Helson v. Kentucky, 279 U. S. 245, 73 L. Ed. 683,* in which it was held that fuel consumed in propelling a ferryboat was an instrumentality of commerce no less than the boat itself.

Applying the theory advanced by appellant a railway locomotive would not be considered an instrumentality of interstate commerce even though engaged in hauling a train in that commerce. Under that theory the only instrumentality of the interstate commerce would be the cars in which goods or passengers were transported, and a railway locomotive and the power produced by it would be subject to the tax involved in this cause to the same extent as the engines employed at the compressor station at the origin of the interstate pipe line. In fact, except for the provision of the statute exempting self-propelled vehicles from the operation of the tax imposed, the argument advanced would be exactly appropriate to the function performed by a railway locomotive or the machinery in a ferryboat, considered in the case of *Helson v. Kentucky, supra.*

The theory advanced in the light of practical application is unsound and results only from erroneously designating consumption and use as a process of manufacture. The engines employed at the Munce Compressor Station and the power produced by them are essential instrumentalities and the principal means through which the interstate transportation of natural gas is accomplished.

C.

The arguments presented by appellant are based upon the theory that a state may impose an occupational tax upon all those engaged in the business of manufacturing or generating power of any character and that such a tax will not be considered as a prohibited burden upon interstate commerce even though the power manufactured

is actually consumed in that commerce. Whatever may be said of the soundness of such a theory, which we do not concede in its application to the facts of this case, the arguments are entirely theoretical for the reason that the tax imposed by the statute in controversy is not a tax of that character. Under the plain provisions of the statute the tax is imposed upon all persons engaged in any business or occupation, other than those particularly exempted, in the conduct of which is used at any time electrical or machanical power of more than ten horespower. For convenience we quote again the relevant provisions of that statute:

> "Section 3. In addition to all other taxes of every kind imposed by law, every person, firm, corporation or association of persons engaged in the State of Louisiana in any business or occupation, which person, firm, corporation or association of persons uses in the conduct of such business or occupation, at any time, electrical or mechanical power of more than ten horsepower and does not procure all the power required in the conduct of such business or occupation from a person, firm, corporation or association of persons subject to the tax imposed by Section 1 or Section 2 of this act, shall be subject to the payment of an excise, license, or privilege tax of One Dollar ($1.00) per annum for each horsepower of capacity of the machinery or apparatus, known as the 'prime mover', or 'prime movers', operated by such person, firm, corporation or association of persons, for the purpose of producing power for use in the conduct of such business or occupation; * * * and provided further that in computing the tax imposed by this Section 3, there shall be excluded from the horsepower capacity of all machinery and apparatus operated, that part of such capacity used in a mechanical, agricultural or horticultural pursuit, or any other

occupation exempt from a license tax under Section 8 of Article X of the Constitution of Louisiana, or in operating a sawmill or a mill for grinding sugar-cane or producing raw sugar, or in conducting any business of selling electricity or any business conducted under any franchise or permit granted by the State of Louisiana or any subdivision thereof, or in propelling or motivating any automobile, truck, tug, vessel, or other self-propelled vehicle, on land, water or air."

Although the statute does not set forth an enumeration of the several businesses and occupations subjected to the payment of the tax imposed by any orthodox standard of designation of businesses and occupations, the tax imposed, nevertheless, appears to be an occupational tax, with a general classification of all businesses in which electrical or mechanical power is used. The fact that the tax was intended to be, and is, a tax upon each occupation and business in which mechanical power is employed is further emphasized by the exemptions of the statute which relate to specific businesses and occupations by usual and customary designations. The result of exempting from the operation of the tax those engaged in occupations exempt from license taxation under certain provisions of the State Constitution, sawmill and sugar businesses, etc., is in effect to specially enumerate all other businesses in which mechanical power is employed and to impose the tax on those businesses as though specially named in the statute.

Considering the tax otherwise than as a tax imposed upon the occupation or business conducted, it must be said to be an excise or license tax upon the privilege of using or employing machinery or mechanical apparatus in the

conduct of any business not specially exempted from the operation of the statute; and in so far as the validity of the statute is questioned in this proceeding, it seems immaterial whether the tax is denominated a tax upon an occupation or upon the privilege of using machinery or mechanical apparatus. It is definitely settled by numerous decisions of this Court that a state cannot lay a tax on interstate commerce in any form, whether by a tax on the occupation or business of carrying it on or indirectly by taxing the use of means of transportation or commerce.

Helson v. Kentucky, 279 U. S. 245; 73 L. Ed. 683;
Minot v. Philadelphia W. & B. Ry. Co., 2 Abb. (U. S.) 323, Fed. Cas. No. 9645;
Bingaman v. Golden Eagle Western Lines, 297 U. S. 626; 80 L. Ed. 928.

The contention here is that the tax imposed is an unlawful burden upon interstate commerce, and it is consequently unimportant whether the tax is said to be imposed upon the business of carrying on that commerce or indirectly upon the use of the means through which the interstate transportation of natural gas is accomplished.

The measure of the tax imposed by the statute is the size or capacity of the machinery or apparatus operated in the business subject to the tax and has no reasonable relationship whatever to the amount of power generated or produced. It is unimportant under the statute how much power is produced or consumed; and once any machine or apparatus is used for a single day, the tax is imposed according to the full rated horsepower capacity of the machinery. We can imagine no tax validly imposed upon the exercise of a privilege of any kind where the

basis of the tax has no reasonable relationship to the privilege exercised or conferred.

Air-way Electric Appliance Corporation v. Day, 266 U. S. 71, 69 L. Ed. 169.

The fact that the tax in this case is not measured in any sense by the amount of power produced or hours during which the machinery or apparatus is operated in itself indicates that there was no intention to impose a tax upon the manufacture or production of power.

The statute has been construed by the Supreme Court of the State of Louisiana and the tax held to be an excise, license or privilege tax "collectible only from those who in the conduct of their businesses or occupations use electrical or mechanical power of more than 10 horsepower".

State ex rel. Porterie v. H. L. Hunt, Inc., 182 La. 1073.

Upon the question of construction the decision of the state court will, of course, be accepted; but with regard to rights asserted under the Federal Constitution, this Court will regard the substantial operation and effect of the law as applied and enforced regardless of the characterization or form in which the taxing scheme is cast.

St. Louis S. W. R. Co. v. Arkansas ex rel. Norwood, 235, U. S. 350; 59 L. Ed. 266:

> "Upon the mere question of construction we are, of course, concluded by the decision of the state court of last resort. But when the question is whether a tax imposed by a state deprives a party of rights secured by the Federal Constitution, the decision is not dependent upon the form in which the taxing scheme is cast, nor upon the character-

ization of that scheme as adopted by the state court. We must regard the substance, rather than the form, and the controlling test is to be found in the operation and effect of the law as applied and enforced by the state. Henderson v. New York (Henderson v. Wickham) 92 U. S. 259, 268, 23 L. ed. 543, 547; Williams v. Mississippi, 170 U. S. 213, 225, 42 L. ed. 1012, 1016, 18 Sup. Ct. Rep. 583; Smith v. St. Louis & S. W. R. Co. 181 U. S. 248, 257, 45 L. ed. 847, 850, 21 Sup. Ct. Rep. 603; Stockard v. Morgan, 185 U. S. 27, 37, 46 L. ed. 785, 794, 22 Sup. Ct. Rep. 576; Reid v. Colorado, 187 U. S. 137, 151, 47 L. ed. 108, 115, 23 Sup. Ct. Rep. 92, 12 Am. Crim. Rep. 506; Galveston, H. & S. A. R. Co. v. Texas, 210, U. S. 217, 227, 52 L. ed. 1031, 1037, 28 Sup. Ct. Rep. 638; Western U. Teleg. Co. v. Kansas, 216 U. S. 1, 27, 54 L. ed. 355, 366, 30 Sup. Ct. Rep. 190; * * *"

(Pp. 362 & 363.)

In the case of *State ex rel. Porterie v. H. L. Hunt, Inc., 182 La. 1073*, it was contended that the tax imposed by the statute in question was actually a property tax and, consequently, invalid under provisions of the State and Federal Constitutions. In the course of the opinion the tax levied by the statute was described and construed in the following language:

"The tax levied under Act No. 6 of 1932 is not based on the ownership and the assessed value of the machines or apparatus described in the act. It is based on their *use* in the *user's* business, whether he is the owner or not, and irrespective of their assessed value. Under the statute, no tax is due by the owner of the machines or apparatus described therein unless they are used in the conduct of his business. But the owner's nonuse of the machines or apparatus does not exempt him from the payment of an ad valorem or property tax thereon.

"Act No. 6 of 1932 designates the tax levied under its provisions as an excise, license, or privilege tax. What characterizes the tax in dispute as a license or privilege tax is that it is collectible only from those who in the conduct of their businesses or occupations use electrical or mechanical power of more than 10 horsepower. The measure of the tax is the horsepower capacity, exceeding 10, of the machines or apparatus *used* in generating the electrical or mechanical power *used* in the taxpayer's business. Ownership is immaterial. The tax is not based on ownership. It is not levied or collectible from the owner of the property *unless he uses it* in the conduct of his business and then only in proportion to the horsepower capacity of the property." (Italics ours).

(Pp. 1079-1080.)

From the statements quoted it is apparent that the tax is not imposed upon any incident of ownership fixed or determined prior to use of the apparatus employed in the user's business but, in substance, is a tax upon the use of the apparatus employed, the incidence of which is fixed by use alone. The case presented is not one of the mere use of an instrumentality of interstate commerce subsequent to the incidence of the tax imposed (see: *Nashville, Chattagnooga & St. Louis Ry. Co. v. Wallace, 288 U. S. 249-268)*, but one in which the tax imposed falls directly upon use, the incidence of the tax being upon use of the instrumentality employed and not until use. It follows that when a business subjected to the operation of the statute is conducted as an interstate business, the tax is imposed upon the business of conducting interstate commerce or indirectly upon the use of an instrumentality without which that commerce could not be accomplished.

In the case of *Cooney v. Mountain States T. & T. Company, 294 U. S. 384; 79 L. Ed. 934,* it appears that the State of Montana had levied a privilege or occupation tax upon all those engaged in the telephone business, measured by the number of telephone instruments owned and controlled in the State. The defendant, Mountain States T. & T. Company, resisted the payment of the tax upon the ground that it constituted an illegal interference with interstate commerce, because the instruments owned by the company located in the State of Montana were used indiscriminately in intrastate and interstate business. In reaching the conclusion that such a tax was invalid, the Court in the course of the opinion said:

> "A privilege or occupation tax which a State imposes with respect to both interstate and intrastate business, through an indiscriminate application to instrumentalities common to both sorts of commerce, has frequently been held to be invalid. Leloup v. Mobile, 127 U. S. 640, 32 L. ed. 311, 8 S. Ct. 1380, 2 Inters. Com. Rep. 134, supra; Pickard v. Pullman S. Car Co., 117 U. S. 34, 46, 29 L. ed. 785, 789, 6 S. Ct. 635; Crutcher v. Kentucky, 141 U. S. 47, 59, 35 L. ed. 649, 652, 11 S. Ct. 851; Barret v. New York, 232 U. S. 14, 29, 31, 58 L. ed. 483, 489, 490, 34 S. Ct. 203; Platt v. New York, 232 U. S. 35, 36, 58 L. ed. 492, 493, 34 S. Ct. 209; Bowman v. Continental Oil Co., 256 U. S. 642, 647, 648, 65 L. ed. 1130, 1144, 1145, 41 S. Ct. 606. In the cases of the express companies, the principle was applied to a privilege tax imposed alike with respect to wagons used in the movement of both interstate and intrastate shipments. The local shipments 'were handled in the same vehicles, and by the same men' that were employed in connection

with the interstate transportation and it was impracticable to effect a separation. Barrett v. New York, 232 U. S. 14, 58 L. ed. 483, 34 S. Ct. 203, and Platt v. New York, 232 U. S. 35, 58 L. ed. 492, 34 S. Ct. 209, supra. In Bowman v. Continental Oil Co., 256 U. S. 642, 65 L. ed. 1139, 41 S. Ct. 606, supra, the question arose under a statute of New Mexico laying an annual license tax of fifty dollars for each station distributing gasoline. The Court pointed out the distinction between an excise tax on sales of gasoline where, as the subject matter was separable, full protection could be afforded by enjoining enforcement as to the interstate business, and the license tax which with its prohibition fell upon the business as a whole. The Court said: 'But with the license tax it is otherwise. If the statute is inseparable, then both by its terms and by its legal operation and effect this tax is imposed generally upon the entire business conducted, including interstate commerce as well as domestic; and the tax is void.' The difficulty, continued the Court, 'is that, since plaintiff, so far as appears, necessarily conducts its interstate and domestic commerce in gasoline indiscriminately at the same stations and by the same agencies, the license tax cannot be enforced at all without interfering with interstate commerce unless it be enforced otherwise than as prescribed by the statute—that is to say, without authority of law. Hence, it cannot be enforced at all.'

"In the instant case, the tax, being indivisible and indiscriminate in its application, necessarily burdens interstate commerce. We do not pass upon the other questions presented."

(Pp. 393-394.)

In the case of *State Tax Commission of Mississippi v. Interstate Natural Gas Company, 284 U. S. 41; 76 L. Ed. 156*, the Supreme Court held a statute of the State of

Mississippi invalid as an unlawful burden upon interstate commerce which imposed a tax upon pipe lines as follows:

> "Section 171. Pipe Line Company—Upon each person engaging and/or continuing in this state in the business of operating a pipe line or transporting in or through this state oil, or natural or artificial gas, through pipes, and/or conduits, a tax, as follows:
>
> On each mile of pipe having a diameter of 20 inches or more $50.00
>
> On each mile of pipe having a diameter of 15 inches and less than 20 inches $35.00
>
> On each mile of pipe having a diameter of 12 inches and less than 15 inches $25.00
>
> On each mile of pipe having a diameter of less than 12 inches ..... $10.00"
>
> *Privilege Tax Code of Mississippi Laws of 1932 H. B. No. 660.*

Similar cases are reported in the following decisions of this Court:

Bowman v. Continental Oil Company, 256 U. S. 642; 65 L. Ed. 1139;

Sprout v. South Bend, 277 U. S. 163; 72 L. Ed. 833.

See also:

Helson v. Kentucky, 279 U. S. 245; 73 L. Ed. 683;

Bingaman v. Golden Eagle Western Lines, 297 U. S. 626; 80 L. Ed. 928;

Gloucester Ferry Company v. Pennsylvania, 114 U. S. 196; 29 L. Ed. 158;

Pickard v. Pullman Southern Car Company, 117 U. S. 34; 29 L. Ed. 785.

The statute in question is an occupation or privilege tax levied with respect to both interstate and intrastate business through an indiscriminate application to instrumentalities common to both sorts of commerce and is, in its operation upon the interstate business conducted by appellee, invalid.

D.

During the period involved in this suit ninety-six per cent. (96%) of the natural gas transported by appellee through its main twenty inch line was delivered through the power produced from the engines at the origin of that line in interstate commerce into the States of Texas and Arkansas. The tax levied by the statute is based entirely upon the horsepower capacity of the engines employed, and there is no theory upon which the tax could be considered as separable or divisible with regard to interstate business.

The appellee necessarily conducts its interstate and domestic business in distributing natural gas indiscriminately through the same lines and by the same agencies, and the tax cannot be enforced at all without interfering with interstate commerce unless it be enforced in some manner other than that set forth in the statute or without legal authority. The result is that it cannot be enforced at all.

Bowman v. Continental Oil Company, 256 U. S. 642; 65 L. Ed. 1139;

Cooney v. Mountain States T. & T. Company, 294 U. S. 384; 79 L. Ed. 934;

Sprout v. South Bend, 277 U. S. 163; 72 L. Ed. 833.

To support the contention that the tax does not operate as a direct burden upon interstate commerce, appellant relies upon the case of *Wiggins Ferry Company v. City of East St. Louis, 2 S. Ct. Rep. 257.* The decision in that case involved the right of the State, which had granted the franchise to the ferry company by legislative act and upon specific conditions, to tax the exercise of the rights granted under the franchise. The facts of the case and issues involved are not comparable to the facts and issues in this cause and the citation, we submit, is not appropriate. Compare *Gloucester Ferry Company v. Pennsylvania, 114 U. S. 196.*

CONCLUSION.

In the discussion of the facts of this case we have referred only to the ten 1000HP engines employed directly in pumping gas into the interstate main and have not mentioned the two 250HP engines connected to the electric generators at the so-called Munce Compressor Station. The functions performed by these two engines are such that they compose a component part of the system through which the interstate transportation is accomplished *(R. 49)*, with the result that no distinction can be made with regard to their use. The function performed by these engines is described in the Record as follows:

> "Munce Station at Sterlington consists of ten 1,000 horsepower Cooper Bessemer gas burning engines, directly connected to ten gas compressors, and two 250 horsepower gas burning engines directly connected to electric generators; all housed in one main building and an auxilary building in which is also a machine shop. The station can not be operated without the use of auxiliary power to

> furnish station lighting, water for cooling the engines and pumps, com- (fol. 67) pressed air for starting the engines, and power for the machine shop; the most convenient method of furnishing such auxiliary power is in the form of electric energy, and at the present time all gas compressor stations use electric energy for incidental power required for the purposes mentioned."
>
> *Affidavit of W. E. Nestor, R. 49.*

It is apparent that the function performed by these two smaller engines was that of a necessary instrumentality through which the interstate transportation of natural gas was accomplished.

For the reasons stated, it is respectfully submitted that the tax involved is repugnant to the commerce clause of the Federal Constitution and that the decree of the lower court should be affirmed.

Respectfully submitted,

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Attorneys for Appellee.

APPENDIX

ACT NO. 6.

House Bill No. 286. By Mr. Lee.

AN ACT

"To raise additional revenue for the State of Louisiana by levying an excise, license or privilege tax on persons, firms, corporations and associations of persons engaged in the business of manufacturing or generating or selling electricity for heat, light, or power, in the State of Louisiana and on persons, firms, corporations and associations of persons engaged in certain other businesses or occupations using electrical or mechanical power produced by such persons, firms, corporations or associations of persons; providing for the keeping and maintaining of necessary records and instruments for computing the tax hereby imposed; providing penalties for the failure or omission to keep the required instruments and records; providing for the enforcement of this Act by the Supervisor of Public Accounts; providing penalties for the failure to make true and correct returns hereunder; providing for the seizure and sale of the tax debtor's property in case of failure to pay the said taxes; providing that any person intentionally furnishing false information or making false oath under this Act shall be guilty of perjury; providing that all monies collected under this Act shall be paid into the General Fund; providing that Twenty-five Thousand ($25,000.00) Dollars per annum shall be deducted from the funds collected under this Act for the enforcement thereof; providing that if any clause, sentence, paragraph, section or any part of this act be adjudged invalid, such judgment shall not affect or impair or in-

validate the remainder of this Act; providing that the tax levied by this Act shall become effective August 1st, 1932; prohibiting any municipality, parish or other subdivision of the State of Louisiana from repeating or duplicating in whole or in part the tax hereby imposed; and repealing all laws or parts of laws inconsistent or in conflict herewith.

"Section 1. Be it enacted by the Legislature of Louisiana, that in addition to all other taxes of every kind now imposed by law, every person, firm, corporation or association of persons engaged in the business of manufacturing or generating electricity for heat, light or power, in the State of Louisiana, shall be subject to the payment of an excise, license or privilege tax of two per cent per annum of the gross receipts from the sale of the electricity so manufactured or generated in this State, except the receipts from that portion of said electricity sold to any person, firm, corporation or association of persons for distribution and resale, and said tax shall be paid to the State of Louisiana and collected by the Supervisor of Public Accounts in the manner hereinafter provided.

"Section 2. In addition to all other taxes of every kind now imposed by law, every person, firm, corporation or association of persons, engaged in the business of selling electricity not manufactured or generated by him or it, for heat, light, or power in the State of Louisiana, shall be subject to the payment of an excise, license or privilege tax of two per cent. per annum of the gross receipts from the sale of such electricity, not manufactured or generated by him or it sold in the State of Louisiana, except the re-

ceipts from that portion of said electricity sold to any person, firm, corporation or association of persons for distribution and resale, and said tax shall be paid to the State of Louisiana and collected by the Supervisor of Public Accounts in the manner hereinafter provided; provided that if any person, firm, corporation or association of persons, the principal use of whose electric facilities is the generation of electricity for sale, shall furnish any electricity for heat, light or power, to any branch of the business of such person, firm, corporation or association of persons not operating under a franchise or permit from the State of Louisiana, or some subdivision thereof, the fair value of the electricity furnished to such branch shall be included in the gross receipts of such person, firm, corporation or association of persons for the purpose of computing the tax hereby imposed; provided further that the provisions of this act shall not apply to any person, firm, corporation or association of persons owning and operating an electricity generating plant of ten horsepower or less, nor shall the provisions of Sections 1 and 2 of this Act apply to any person, firm, corporation or association of persons manufacturing or generating electricity for their exclusive use or for use upon their own premises by their bona fide operatives or employees, but the tax shall be paid upon as much thereof as may be sold to other than their employees; provided further that nothing in this Act is intended or shall be construed as levying any tax on any subdivision or municipality of the State of Louisiana or any agency of the State or of any subdivision or municipality thereof.

"Section 3. In addition to all other taxes of every kind imposed by law, every person, firm, corporation or

association of persons engaged in the State of Louisiana in any business or occupation, which person, firm, corporation or association of persons uses in the conduct of such business or occupation, at any time, electrical or mechanical power of more than ten horsepower and does not procure all the power required in the conduct of such business or occupation from a person, firm, corporation or association of persons subject to the tax imposed by Section 1 or Section 2 of this act, shall be subject to the payment of an excise, license or privilege tax of One Dollar ($1.00) per annum for each horsepower of capacity of the machinery or apparatus, known as the 'prime mover', or 'prime movers', operated by such person, firm, corporation or association of persons, for the purpose of producing power for use in the conduct of such business or occupation; provided that any user of power securing all or any part of the power required in the conduct of the business or occupation of such user from a person, firm, corporation or association of persons subject to the tax imposed by Section 1 or Section 2 of this act, shall not be liable for the tax imposed by this Section 3, or for a greater tax under this Section 3, as the case may be, because of the employment of stand-by power facilities by such user during periods of failure of the supply of purchased power; and provided further that any person, firm, corporation or association of persons the principal use of whose electric facilities is the generation of electricity for sale, shall not be subject to an additional tax under this Section 3 on the horsepower capacity of any machinery or apparatus used in the generation of electricity; and provided further that in computing the tax imposed by this Section 3, there shall be excluded from the horsepower capacity of all machinery

and apparatus operated, that part of such capacity used in a mechanical, agricultural or horticultural pursuit, or any other occupation exempt from a license tax under Section 8 of Article X of the Constitution of Louisiana, or in operating a sawmill or a mill for grinding sugar-cane or producing raw sugar, or in conducting any business of selling electricity or any business conducted under any franchise or permit granted by the State of Louisiana or any subdivision thereof, or in propelling or motivating any automobile, truck, tug, vessel, or other self-propelled vehicle, on land, water or air.

"Section 4. Every person, firm, corporation or association of persons engaged in the business of generating and selling or selling electricity for light, heat or power in this State shall provide itself or themselves with and keep the necessary records and instruments to show respectively the gross receipts from the amount of electricity generated and sold in this State, the amount of gross receipts from the electricity sold in this State, the amount of such gross receipts from sales to a person, firm, corporation or association of persons for distribution and resale, and the value of electricity furnished to any branch of the business of such person, firm, corporation or association of persons not operating under a franchise or permit from the State of Louisiana, or some subdivision thereof.

"Every person, firm, corporation or association of persons subject to the tax imposed by Section 3 hereof, shall provide himself or itself with and keep the necessary records and instruments to show the horsepower capacity of the machinery or apparatus on which the tax imposed by said Section 3 is computed.

"Any person, firm, corporation or association of persons required to keep either the necessary instruments or records prescribed in this Section shall be subject to a penalty of One Hundred ($100.00) Dollars per day for each day's failure or omission to keep either the required instruments or required records. Such penalties shall be collected in the same manner as provided herein for the collection of delinquent taxes; provided, upon reasonable cause shown, the Supervisor of Public Accounts may remit or refund the said penalties in whole or in part.

"Section 5. The Supervisor of Public Accounts or his duly authorized representatives shall administer and enforce the collection of the tax imposed by this Act. He shall have the power to enter upon the premises of any tax payer liable for a tax under this Act, and to examine, or cause to be examined any of the instruments or books or records or instruments, books and records of any person, firm, corporation or association of persons subject to a tax under this Act, and to secure any other information directly or indirectly concerned in the enforcement of this Act, and to make and enforce reasonable rules and regulations and regulations pertinent to the enforcement of this Act, which shall have the full force and effect of law.

"Section 6. Every person, firm, corporation or association of persons subject to the tax levied in this act shall annually, between first day of August and the first day of September, make a true and correct return to the Supervisor of Public Accounts in such form as he may prescribe, showing the gross receipts derived from the sale of electricity manufactured and generated, and the gross

receipts derived from the sale of electricity purchased, and the portion of said gross receipts derived from sales to a person, firm, corporation or association of persons for distribution and resale, and the value of electricity furnished to any branch of the business of such person, firm, corporation or association of persons, not operating under a franchise or permit from the State of Louisiana, or some subdivision thereof, or as the case may be, the horsepower capacity of the machinery or apparatus on which the tax imposed by Section 3 of this Act is computed, in each case during the twelve month period ending on the 31st day of July next preceding the making of such return, and shall pay the tax provided for in this Act, at the time said return is made. All taxes imposed by this Act shall become delinquent on the 1st day of September.

"In case of failure to make a true and correct return, as provided in this section, the Supervisor of Public Accounts shall make such return, or cause the same to be made, upon such information as he may be able to obtain, assess the tax due thereon and add a penalty of twenty-five per cent (25%) to the amount of the tax for failure of the taxpayer to make the return.

"That if the excise, license or privilege tax due as hereinabove provided is not paid at the time or in the manner specified, by the person, firm, corporation or association of persons owing the same, then the Supervisor of Public Accounts shall make in any manner feasible, and cause to be recorded in the mortgage records of the Parish where such person, firm, corporation or association of persons is engaged, occupied or continuing in a business or